

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2004-205-C - ORDER NO. 2004-564
NOVEMBER 12, 2004

IN RE: Application of Image Access, Inc. DBA) ORDER GRANTING
Newphone for a Certificate of Public) MOTION FOR
Convenience and Necessity to Operate as a) EXPEDITED REVIEW
Reseller of Interexchange Telecommunications) AND CERTIFICATE
Services within the State of South Carolina.)

This matter comes before the Public Service Commission of South Carolina (the “Commission”) by way of the Application of Image Access, Inc. dba Newphone (Newphone or the Company) requesting a Certificate of Public Convenience and Necessity authorizing it to operate as a reseller of interexchange telecommunications services within the State of South Carolina. Subsequent to the filing of the Application, Newphone, by way of a Motion for Expedited Review, requested that the matter be scheduled for final disposition by the Commission at its earliest opportunity.

Newphone is a corporation organized under the laws of the State of Louisiana and is authorized to transact business within the State of South Carolina by the Secretary of State.

The Commission’s Executive Director instructed Newphone to publish a prepared Notice of Filing in newspapers of general circulation in the areas affected by the Application. The purpose of the Notice of Filing was to provide notice of the Application to any interested parties and to advise interested parties of the manner and time in which to file pleadings to participate in the docket. Newphone filed Affidavits of Publication as

proof that it had complied with the instructions of the Executive Director. No Petitions to Intervene, letters of protest, or comments were received by the Commission with regard to the instant Application.

MOTION FOR EXPEDITED REVIEW

Subsequent to notice of the Application being published and after the return date expired with no intervention or opposition, Newphone requested expedited review and waiver of a hearing in the matter. Newphone also filed the verified testimony of Jim R. Dry, Vice-President and Chief Financial Officer, to support the Application. The matter was brought to the Commission for consideration.

Upon consideration of Newphone's request for expedited review (waiver of hearing), the Commission finds that expedited review should be granted. In its request, Newphone waived its right to a formal hearing. The Commission finds that notice of the Application was properly afforded to the public and that no interested person sought to become a party to the proceeding. The Commission finds that procedural due process was afforded in this matter and further finds that Newphone made a knowing waiver of a formal hearing. Therefore, the Commission will consider the Application in the context of its regularly scheduled weekly meeting, with court reporter present, and for purposes of the expedited review, the Commission will deem the examination of the Application and verified testimony during the course of the Commission's regularly scheduled meeting with court reporter present as a hearing on this matter.

According to the Application and the verified testimony of Jim R. Dry, Newphone is a Louisiana corporation that has received authorization to transact business within the

State of South Carolina. Newphone seeks authority to operate as a reseller of intraLATA and interLATA intrastate telecommunications services to the public on a statewide basis. The Company seeks authority to offer on a resale basis within South Carolina intrastate, interLATA and, to the extent authorized by the Commission, intraLATA direct-dialed services including (1+) service, flat rate service, 800 inbound service, and travel cards.

Newphone has been providing local telecommunications in South Carolina since 1999, pursuant to interconnection agreements with BellSouth, and a Certificate from this Commission, issued in Order 1999-762, dated October 26, 1999. The Company states that, with regard to its long distance services, the Company intends to rely on the expertise of its underlying carriers for maintenance and administration of the underlying network used to provide long distance services.

Newphone proposes to offer resold long distance services in the State of South Carolina. Additionally, Newphone does not own any transmission facilities in South Carolina. Newphone will resell long distance service by using the facilities of other carriers. Furthermore, customers who have concerns about their bills or complaints about Newphone may contact Newphone by writing to the Company's business address or calling customer service representatives twenty-four hours a day, seven days a week.

Mr. Dry described the Company's technical and managerial qualifications to provide telecommunications services in South Carolina. The testimony reveals that Newphones' management team is composed of individuals who have significant experience in business generally and telecommunications specifically.

Regarding the Company's financial resources to provide telecommunications services in South Carolina, Mr. Dry testified that Newphone has the financial resources to provide the proposed services in South Carolina. As a reseller, Newphone will not incur the costs of providing facility-based services to serve the South Carolina market.

Mr. Dry concluded by testifying that Newphone obtaining a Certificate from this Commission will allow the Company to provide economical, efficient, and high quality local and long distance telephone service, using existing facilities.

Upon review and consideration of the Application, the verified testimony of Mr. Dry, and the applicable law, the Commission hereby issues its findings of fact and conclusions of law:

FINDINGS OF FACT

1. Newphone is organized as a company under the laws of the State of Louisiana and has been authorized by the Secretary of State to transact business within the State of South Carolina.
2. Newphone is a provider of long distance telecommunications services and wishes to provide long distance services in South Carolina. Newphone already operates as a reseller of local telecommunications services.
3. Newphone has the experience, capability, and financial resources to provide the services as described in its Application.
4. The Commission finds it appropriate for Newphone's interexchange telecommunications services to be regulated in accordance with procedures established in Order Numbers 95-1734 and 96-55 in Docket Number 95-661-C.

CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to Newphone to provide intrastate interLATA service and to originate and terminate toll traffic within the same LATA, as set forth herein, through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Service (MTS), Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. The Commission adopts a rate design for Newphone for its resale of interexchange services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984).

3. Newphone shall not adjust its interexchange rates below the approved maximum level without notice to the Commission and to the public. Newphone shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes. However, the public notice requirement is waived, and therefore not required, for reductions below the maximum cap in instances which do not affect the general body of subscribers or do not constitute a general rate reduction. In Re: Application of GTE Sprint Communications, etc., Order No. 93-638, issued in Docket No. 84-10-C (July 16,

1993). Any proposed increase in the maximum rate level for interexchange services reflected in the tariff, which would be applicable to the general body of the Company's subscribers, shall constitute a general ratemaking proceeding and will be treated in accordance with the notice and hearing provision of S.C. Code Ann. §58-9-540 (Supp. 2002).

4. If it has not already done so by the date of issuance of this Order, Newphone shall file its revised tariff and an accompanying price list within thirty (30) days of receipt of this Order. The revised tariff shall be consistent with the findings of this Order and shall be consistent with the Commission's Rules and Regulations. Further, Newphone shall file a copy of its Bill Form as required by 26 S.C. Code Ann. Regs. 103-612.2.2 and 103-622.1 (1976) with its final Tariff.

5. Newphone is subject to access charges pursuant to Commission Order No. 86-584, in which the Commission determined that for access purposes resellers and facilities-based interexchange carriers should be treated similarly.

6. With regard to the Company's resale of service, an end-user should be able to access another interexchange carrier or operator service provider if the end-user so desires.

7. Newphone shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If Newphone changes underlying carriers, it shall notify the Commission in writing.

8. The Company shall, in compliance with Commission regulations, designate and maintain an authorized utility representative who is prepared to discuss, on

a regulatory level, customer relations (complaint) matters, engineering operations, tests and repairs. In addition, the Company shall provide to the Commission in writing the name of the authorized representative to be contacted in connection with general management duties as well as emergencies which occur during non-office hours.

Newphone shall file the names, addresses and telephone numbers of these representatives with the Commission within thirty (30) days of receipt of this Order. The “Authorized Utility Representative Information” form can be found at the Commission’s website at www.psc.state.sc.us/forms; this form shall be utilized for the provision of this information to the Commission. Further, the Company shall promptly notify the Commission in writing if the representatives are replaced.

9. With regard to the origination and termination of toll calls within the same LATA, Newphone shall comply with the terms of Order No. 93-462, Order Approving Stipulation and Agreement, in Docket Nos. 92-182-C, 92-183-C, and 92-200-C (June 3, 1993), with the exception of the 10-XXX intraLATA dialing requirement, which has been rendered obsolete by the toll dialing parity rules established by the Federal Communications Commission pursuant to the Telecommunications Act of 1996 (See, 47 CFR 51.209). Specifically, the Company shall comply with the imputation standard as adopted by Order No. 93-462 and more fully described in paragraph 4 of the Stipulation and Appendix B approved by order No. 93-462.

10. Each telecommunications company certified in South Carolina is required to file annually the Intrastate State Universal Service Fund (USF) worksheet. This worksheet provides the Commission Staff information required to determine each

telecommunications company's liability to the State USF fund. The Intrastate USF worksheet is due to be filed annually no later than August 15th.

11. If the Company sells its debit cards to retail establishments for resale of the debit cards, and the retailer of the debit cards deviates from the suggested retail price as filed in the tariff, or as approved by the Commission in a special promotion, then the Company will withdraw its cards from that retail outlet. This Commission strongly suggests that the Company enter into written agreements with its South Carolina retail outlets regarding this policy of abiding by suggested retail pricing prior to the outlet marketing the card.

12. Newphone shall file annual financial information in the form of annual reports and gross receipts reports as required by the Commission. The annual report and the gross receipt report will necessitate the filing of intrastate information. Therefore, Newphone shall keep financial records on an intrastate basis for South Carolina to company with the annual report and gross receipts filings. The proper form for filing annual financial information can be found at the Commission's website at www.psc.state.sc.us/reference/forms.asp. The title of this form is "Annual Report for Interexchange Companies." This form shall be utilized by the Company to file annual financial information with the Commission and shall be filed no later than April 1st.

Commission gross receipts forms are due to be filed with the Commission no later than October 1st of each year. The proper form for filing gross receipts information can be found at the Commission's website at www.psc.stae.sc.us/reference/forms.asp, and the appropriate form is entitled "Gross Receipts for Utility Companies."

13. This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

/s/
Randy Mitchell, Chairman

ATTEST:

/s/
O'Neal Hamilton, Vice-Chairman

(SEAL)